



# **COMMONWEALTH of VIRGINIA**

Molly Joseph Ward  
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY  
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David K. Paylor  
Director

Robert J. Weld  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO NICHOLS TRANSPORT, INC. IR 2014-W-3415**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board, and Nichols Transport, Inc. for the purpose of resolving certain violations of the Virginia Waste Management Act and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.
2. "Alternate Water Supply System" means a tank or other semi-temporary source of potable water. It does not include a permanent well.
3. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
4. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
5. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
6. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

7. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
8. "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
9. "Generator" means person who is a hazardous waste generator, as defined by 40 CFR § 260.10.
10. "Hazardous Waste" means any solid waste meeting the definition and criteria provided in 40 CFR § 261.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
12. "NTI" means Nichols Transport, Inc., a company authorized to do business in Virginia and its members, affiliates, partners, subsidiaries, and parents. NTI is a "person" within the meaning of Va. Code § 10.1-1400.
13. "Order" means this document, also known as a Consent Order.
14. "Regulations" or "VHWMR" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* Sections 20-60-14, -124, -260 through -266, -268, -270, -273, and -279 of the VHWMR incorporate by reference corresponding parts and sections of the federal Code of Federal Regulations (CFR), with the effective date as stated in 9 VAC 20-60-18, and with independent requirements, changes, and exceptions as noted. In this Order, when reference is made to a part or section of the CFR, unless otherwise specified, it means that part or section of the CFR as incorporated by the corresponding section of the VHWMR. Citations to independent Virginia requirements are made directly to the VHWMR.
15. "Site" means the area in the vicinity of 4238 Jae Valley Road in Roanoke County, Virginia, that was affected by the formaldehyde release from a truck and tanker trailer owned and operated by NTI on June 11, 2014.
16. "Solid Waste" means any discarded material meeting the definition provided in 40 CFR § 261.2.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.

19. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 4 (Va. Code §§ 10.1-1426 through 10.1-1429) of the Virginia Waste Management Act addresses Hazardous Waste Management.

**SECTION C: Findings of Fact and Conclusions of Law**

1. NTI is a person and operator of a vehicle, a truck and tanker trailer, which transports products, including formaldehyde, to customers.
2. Formaldehyde is a U-122 listed commercial chemical product.
3. On June 11, 2014, a truck and tanker trailer owned and operated by NIT carrying a load of formaldehyde wrecked near 4238 Jae Valley Road in Roanoke County, Virginia. As a result of the wreck, approximately 4,500 gallons of formaldehyde was released.
4. NTI hired contractors for remediation and completed an initial investigation. Response activities included groundwater monitoring. None of the water samples taken between June 2014 and March 2015 from four private wells contained detectable levels of formaldehyde.
5. In November 2015, groundwater monitoring detected formaldehyde in one of the monitored wells. That well was located at the Sheldon residence at 4152 Carr Rouse Road in Roanoke County, Virginia.
6. Under 40 CFR 263.30(a), in the event of a discharge of hazardous waste during transportation, the transporter must take appropriate immediate action to protect human health and the environment.
7. Under 40 CFR 263.31, a transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by Federal, State, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.
8. On January 13, 2016, the Department issued NOV No. 16-01-BRRO-002 to NTI.
9. On February 11, 2016, NTI submitted a written response to the NOV.
10. On June 6, 2016, the Department sent a letter to NTI concurring with NTI's May 2016 Work Plan for remediation. The Work Plan contains details for ongoing groundwater monitoring of residential water supply wells and spring locations, installation of an alternate water supply well at the Sheldon residence, and management of purge water generated from monitoring activities. A revised Work Plan, proposed in a communication to VADEQ on December 27, 2016, was agreed upon by VADEQ in a communication dated January 11, 2017. NTI is currently working under the most recent Work Plan

approved on January 11, 2017. NTI will continue to work under a currently approved work plan, including any work plan(s) approved at a later date.

11. Based on the results of the Department's initial site investigation and follow-up site visits and the documentation submitted by NTI and its contractors, the Board concludes that NTI has the duty to investigate and remediate this Site in accordance with the requirements of 40 CFR 263.30(a) and 40 CFR 263.31.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Nichols Transportation, Inc., and Nichols Transportation, Inc. agrees to perform the actions described in Appendix A of this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of NTI for good cause shown by NTI, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those matters specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NTI admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NTI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NTI declares that it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by NTI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate

enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NTI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. NTI shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NTI shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

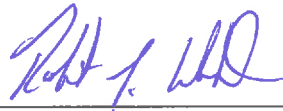
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which NTI intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NTI.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after NTI has completed all of the requirements of the Order;
  - b. NTI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NTI.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NTI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NTI and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NTI certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NTI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NTI.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NTI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23<sup>rd</sup> day of October, 2017.



Robert J. Weld, Regional Director  
Department of Environmental Quality

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Nichols Transport, Inc. voluntarily agrees to the issuance of this Order.

Date: 9-12-17 By: Michael Elliott

State of  
Commonwealth of Virginia  
City/County of COUNTY OF MORGAN

The foregoing document was signed and acknowledged before me this 12<sup>th</sup> day of

Sept by Adrian

Robert H. Curley  
Notary Public for SC

Registration No.

My commission expires: 1/26/26

Notary seal:

## APPENDIX A SCHEDULE OF COMPLIANCE

1. Not later than 60 days after the effective date of this Order, NTI shall submit a Corrective Action Plan ("CAP") for the Site in accordance with the requirements of 40 CFR 263.30(a) and 40 CFR 263.31 for DEQ review and approval. The CAP shall include a proposed human health risk-based cleanup goal that will be subject to DEQ review and approval in accordance with the Regulations. In addition, the CAP shall include a detailed description of the planned corrective actions, groundwater monitoring program, appropriate decision points, and O&M plans for alternate water supply systems. NTI shall install additional Alternate Water Supply Systems at the request of DEQ as needed based on supporting groundwater monitoring data. On an as-needed basis, NTI may propose amendments to the approved CAP to DEQ for review and approval. NTI shall comply with the approved CAP, as amended, until DEQ provides written concurrence that all facets of the CAP have been satisfactorily completed.
2. NTI shall continue to operate and maintain alternative water supply systems as needed until the CAP requirements, as amended, have been met and DEQ has provided written approval of discontinuance.
3. Unless otherwise specified in this Order, NTI shall submit all requirements of Appendix A of this Order to:

Robert Steele  
VA DEQ –Blue Ridge Regional Office  
3019 Peters Creek Road  
Roanoke, VA 24019

Phone: (540) 562-6777  
Email: Robert.Steele@deq.virginia.gov

AND

Brett Fisher, P.G.  
VA DEQ – Central Office  
Mailing address: P.O. Box 1105  
Richmond, VA 23218

Phone: (804) 698-4219  
Email: Brett.Fisher@deq.virginia.gov